

REMARKS/ARGUMENTS

Applicants respectfully request reconsideration of this application and the Office Action dated February 25, 2005.

I. General Remarks Regarding the Content of this Amendment

Upon entry of this Amendment, claims 1-40 will remain pending in this application. Through this Amendment, Applicants have amended claims 6, 11, 23, and 28 to clarify that the arm/bimodal spring interface connects between the bimodal spring member and the arm. Support for this change is readily evident from the original claims and specification (*see*, for example, the original Specification at Paragraphs 29 and 36). The remaining claims remain in their original form. Accordingly, no new matter is included in this Amendment, and no additional claim fees are due as a result of this Amendment.

Applicants acknowledge, with appreciation, the Examiner's indication that original claims 8 and 25 contain patentable subject matter. In view of this Amendment and the remarks that follow, Applicants respectfully submit that all of the claims in this application stand in condition for immediate allowance.

II. Applicants' Claims Comply with the Requirements of 35 U.S.C. § 112, ¶ 2

The Office rejected claims 1-33, 38, and 40 as allegedly indefinite. Applicants respectfully traverse this rejection and request reconsideration.

Applicants respectfully submit that independent claims 1 and 15 recite sufficient structure. Specifically, these claims recite "a bimodal spring member" and "an arm extending from the bimodal spring member" (emphasis supplied). Therefore, a clear structural relationship is set forth in the claims between these recited elements. The claims further recite that the bimodal spring member is movable between two stable positions and that "the arm moves in response to" these movements (emphasis supplied). These claim features also describe aspects of the structural relationship between the bimodal spring member and the arm that extends therefrom.

As to claims 6 and 23, while Applicants do not believe that these claims were deficient in any way in their original form, in order to expedite prosecution and to facilitate allowance of this application, these claims have been amended to recite that the claimed “arm/bimodal spring interface” connects between the bimodal spring member and the arm, thereby clarifying the structure defined by this claim.

As to claims 7 and 24, these claims recite sufficient structure in that they indicate that at least a portion of the arm/bimodal spring interface “extends through” an opening defined in the bimodal spring member when the bimodal spring member is in its first stable position. By describing a position or location of a portion of the arm/bimodal spring interface with respect to the bimodal spring member under certain conditions, the claim sets forth structure relating to the overall claimed element.

Similarly, claims 8 and 25 recite sufficient structure in that they indicate the position or location of the portion of the arm/bimodal spring interface with respect to the bimodal spring member when the bimodal spring member is in its second stable position. Again, by describing this position or location information, the claim sets forth structure relating to the overall claimed element.

Claims 10 and 27 set forth structure in that they describe the structural position (*i.e.*, open or closed positions in claim 10, foot-receiving or foot-engaging positions in claim 27) of the arm when the bimodal spring is in various positions. This claimed structural position information sets forth the structure relating to the overall claimed elements.

Claims 14 and 33 further describe the structure of the bimodal spring member in that these claims describe further structural properties or characteristics of the bimodal spring member (*i.e.*, it stably maintains the various stable positions at times when no external force is applied thereto). Therefore, these claims describe additional structural features or characteristics of the bimodal spring member.

Claim 28 defines structure in that the claim recites that the foot-retaining element extends from the arm. Additionally, while Applicants do not believe that this claim was deficient in any way in its original form, in order to expedite prosecution and to facilitate allowance of this

application, this claim has been amended to recite that the claimed “arm/bimodal spring interface” connects between the bimodal spring member and the arm, thereby clarifying the structure defined by this claim.

The Office also rejected claim 19 as indefinite as allegedly not clearly setting forth structural limitations. Applicants respectfully traverse. Claim 19 recites that the foot-retaining element, the arm, and the bimodal spring “are relatively positioned” so as to define a space for receiving a user’s toes. One skilled in the art would readily understand how these various claim elements can be relatively positioned with respect to one another so as to leave sufficient space for a user’s toes.

The Office also rejected claims 38 and 40 as not reciting additional method steps and therefore not clearly indicating what steps are encompassed by these claims. Claims 38 and 40 recite that the previously defined bimodal spring member stably maintains the first stable position and the second stable position even when no external force is applied to the spring member. The parent claims to claims 38 and 40, namely claims 34 and 39, respectively, recite orienting a bimodal spring member in the first stable position and moving the bimodal spring member to another position. Accordingly, one skilled in the art would readily recognize that claims 38 and 40 describe additional features of the bimodal spring member used in the various method steps described in claims 34 and 39. It is not necessary for each dependent method claim to recite a new or additional method step in order to comply with the requirements of 35 U.S.C. § 112, ¶ 2.

In view of the foregoing, Applicants respectfully submit that the claims in this application are definite and in full compliance with the requirements of 35 U.S.C. § 112, ¶ 2. Withdrawal of this rejection is respectfully requested.

III. Applicants’ Claims Patentably Distinguish from the Cited Art

A. Applicants’ Claims

Applicants’ claim 1 recites an element that includes: a bimodal spring member movable between a first stable position and a second stable position; and an arm extending from the

bimodal spring member, wherein the arm moves in response to the bimodal spring member changing between the first stable position and the second stable position. Independent claim 15 recites a piece of footwear including a foot-engaging element having a bimodal spring member and an arm as described above. Independent method claims 34 and 39 define methods that use bimodal spring members that are moved between two stable positions.

A “bimodal spring member,” as used in Applicants’ specification, is a device that has at least two independent minimal or low stress state positions at which the device can maintain a stable structure. *See* Paragraph 24 of the original specification. An external force applied to the device may move it from one minimal or low stress state position to another. In at least some examples (*e.g.*, as further described in claims 14, 33, 38, and 40), the bimodal spring member is structured such that it maintains these at least two stable positions even when no external forces are applied to the spring member (*e.g.*, a user’s body weight or foot pressure force).

As will be demonstrated below, the prior art cited by the Office does not teach or suggest bimodal spring members, foot-receiving devices including bimodal spring members, and/or methods including use of bimodal spring members as set forth in Applicants’ claims.

B. The Ogle Patent Does Not Anticipate Applicants’ Claims

The Office rejected claims 1-6, 9-18, 20, 21, 23, 26-29, 32-35, and 37-40 as allegedly anticipated by Ogle, U.S. Patent No. 5,282,327 (hereinafter “Ogle”). Applicants respectfully traverse this rejection and request reconsideration.

In the Office Action, the Examiner asserts that elements 16 and 36 in Ogle constitute the claimed bimodal spring member. These elements, as shown in Fig. 3 of Ogle, are merely conventional spiral springs, not bimodal spring members capable of changing between a first stable position and a second stable position as recited in Applicants’ claims. Nothing in Ogle teaches or remotely suggests inclusion of a bimodal spring member of the type recited in Applicants’ claims 1-40.

Applicants’ claims 14, 33, 38, and 40 even more clearly distinguish from the structure shown in Ogle. These claims recite that the bimodal spring member is structured such that it stably maintains at least two stable positions even when no external forces are applied to the

spring member (*e.g.*, a user's body weight or foot pressure force). Absolutely nothing in Ogle teaches or suggests a bimodal spring member having this structure.

Accordingly, in view of the foregoing, Applicants respectfully submit that the Ogle patent clearly fails to anticipate the claimed invention. Withdrawal of this rejection is respectfully requested.

C. The Dorr Patent Does Not Anticipate Applicants' Claims

The Office rejected claims 1-6, 9-18, 20, 21, 23, 26-29, 32-35, and 38-40 as allegedly anticipated by Dorr, U.S. Patent No. 2,069,752 (hereinafter "Dorr"). Applicants respectfully traverse this rejection and request reconsideration.

In the Office Action, the Examiner asserts that elements 28 and 29 in Dorr constitute the claimed bimodal spring member. These elements, as shown in Fig. 4 of Dorr, are merely conventional torsional springs, not bimodal spring members capable of changing between a first stable position and a second stable position as recited in Applicants' claims. Nothing in Dorr teaches or remotely suggests inclusion of a bimodal spring member of the type recited in Applicants' claims 1-40.

Applicants' claims 14, 33, 38, and 40 even more clearly distinguish from the structure shown in Dorr. These claims recite that the bimodal spring member is structured such that it stably maintains at least two stable positions even when no external forces are applied to the spring member (*e.g.*, a user's body weight or foot pressure force). Absolutely nothing in Dorr teaches or suggests a bimodal spring member having this structure.

Accordingly, in view of the foregoing, Applicants respectfully submit that the Dorr patent clearly fails to anticipate the claimed invention. Withdrawal of this rejection is respectfully requested.

D. The Balut Patent Does Not Anticipate Applicants' Claims

The Office rejected claims 1-7, 9-18, 20, 21, 23, 24, 26-30, 32-35, and 37-40 as allegedly anticipated by Balut, U.S. Patent No. 2,693,039 (hereinafter "Balut"). Applicants respectfully traverse this rejection and request reconsideration.

In the Office Action, the Examiner asserts that element 28 in Balut constitutes the claimed bimodal spring member. Elements 28, as shown in Fig. 5 of Balut, are merely conventional connecting springs, not bimodal spring members capable of changing between a first stable position and a second stable position as recited in Applicants' claims. Nothing in Balut teaches or remotely suggests inclusion of a bimodal spring member of the type recited in Applicants' claims 1-40.

Applicants' claims 14, 33, 38, and 40 even more clearly distinguish from the structure shown in Balut. These claims recite that the bimodal spring member is structured such that it stably maintains at least two stable positions even when no external forces are applied to the spring member (*e.g.*, a user's body weight or foot pressure force). Absolutely nothing in Balut teaches or suggests a bimodal spring member having this structure.

Accordingly, in view of the foregoing, Applicants respectfully submit that the Balut patent clearly fails to anticipate the claimed invention. Withdrawal of this rejection is respectfully requested.

E. The Neiley Published Patent Application Does Not Anticipate Applicants' Claims

The Office rejected claims 1-6, 9-12, 14-23, 26-29, and 33-40 as allegedly anticipated by Neiley, U.S. Patent Application Publication No. 2002/0174568 (hereinafter "Neiley"). Applicants respectfully traverse this rejection and request reconsideration.

In the Office Action, the Examiner asserts that Fig. 6 of Neiley illustrates the claimed bimodal spring element. The discussion of Fig. 6 of Neiley, at Paragraph 61 of the Publication, however, does not mention or identify any such "spring" element, much less a bimodal spring member of the type recited in Applicants' claims. The only "spring" identified in the Neiley patent is the conventional torsional spring element 82 described in connection with Fig. 13. Clearly spring element 82 is not a bimodal spring member of the type recited in Applicants' claims.

Applicants' claims 14, 33, 38, and 40 even more clearly distinguish from the structure shown in Neiley. These claims recite that the bimodal spring member is structured such that it

stably maintains at least two stable positions even when no external forces are applied to the spring member (*e.g.*, a user's body weight or foot pressure force). Absolutely nothing in Neiley teaches or suggests a bimodal spring member having this structure.

Accordingly, in view of the foregoing, Applicants respectfully submit that the Neiley patent clearly fails to anticipate the claimed invention. Withdrawal of this rejection is respectfully requested.

F. The Miller Patent Does Not Anticipate Applicants' Claims

The Office rejected claims 1-3, 5, 6, 9, 10, 14-17, 20, 23, 26-29, 31, and 33 as allegedly anticipated by Miller, U.S. Patent No. 2,746,178 (hereinafter "Miller"). Applicants respectfully traverse this rejection and request reconsideration.

In the Office Action, the Examiner asserts that Figs. 4 and 7 in Miller illustrate the claimed bimodal spring member. Again, these elements in Miller are merely conventional spring structures, not bimodal spring members capable of changing between a first stable position and a second stable position as recited in Applicants' claims. Nothing in Miller teaches or remotely suggests inclusion of a bimodal spring member of the type recited in Applicants' claims 1-40.

Applicants' claims 14 and 33 even more clearly distinguish from the structure shown in Miller. These claims recite that the bimodal spring member is structured such that it stably maintains at least two stable positions even when no external forces are applied to the spring member (*e.g.*, a user's body weight or foot pressure force). Absolutely nothing in Miller teaches or suggests a bimodal spring member having this structure.

Accordingly, in view of the foregoing, Applicants respectfully submit that the Miller patent clearly fails to anticipate the claimed invention. Withdrawal of this rejection is respectfully requested.

G. Conclusion Regarding Art Rejections

For the reasons described above, Applicants respectfully submit that the present claims patentably distinguish from the cited art. Withdrawal of these rejections and allowance of claims 1-40 are earnestly solicited.

IV. Conclusion

If the Examiner believes that a telephone conference or a personal interview will be useful to advance the prosecution of this application and/or place the application in condition for allowance, she is invited to contact the undersigned attorney by telephone.

A separate Fee Transmittal form and Petition for Extension of Time are included with this Amendment. Applicants believe that no further fees are due for entry and consideration of this Amendment. If, however, the Office determines that any fees are required, such as fees under 37 C.F.R. §§ 1.16 or 1.17, or if an extension of time is necessary that is not accounted for in the papers filed with this Amendment, the Commissioner is authorized to debit our Deposit Account No. 19-0733 for any necessary fees, including any necessary extension fees or other fees needed to maintain the pendency of this application.

All rejections having been addressed, Applicants respectfully submit that this application is in condition for immediate allowance and respectfully solicit prompt notification of the same.

Respectfully submitted,

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